

## **REMARKS**

Claims 1-13 and 15-25 are currently pending in this application.

### **1. Status of the Claims**

Claims 1-13 and 15-25 are pending in this application. Claim 14 has been cancelled.

### **2. 37 CFR 1.75(c) Rejection**

Claim 14 was objected to under 37 CFR 1.75(c) for failing to further limit the subject matter of a previous claim. Claim 14 has been cancelled. Applicants respectfully request the rejection under 37 CFR 1.75(c) be withdrawn.

### **3. 35 U.S.C. §103(a) Rejections**

Claims 1-25 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,379,729 to Onishi et al. (Onishi) further in view of U.S. Patent No. 5,908,650 to Lenoble et al. (Lenoble).

#### **Lenoble in View of Onishi Does Not Teach or Suggest the Claimed Invention.**

The Examiner rejected Claims 1-25 as being unpatentable over Onishi in view of Lenoble. Applicants respectfully traverse this rejection for the following reasons and for other reasons that will be apparent.

Lenoble discloses an improved pigment composition containing anthocyanin pigment wherein the pigment-improving agents deepen and improve the intensity of the anthocyanin pigment and increase its stability in the presence of light, heat, and/or pH. Lenoble at col. 2, lines 57-67. Anthocyanins are natural compounds found in naturally occurring foods. Lenoble at col.1, lines 18-20. The pigment-improving agents of Lenoble are copigments for anthocyanins, i.e. "they are effective in deepening the color of anthocyanins and increasing their intensity." Lenoble at col. 5, lines 18-21. Furthermore, the use of these pigment-improving agents is applied only to compounds

containing an anthocyanin pigment additive and requires that they be a potent copigment for the anthocyanins. Lenoble at col. 5, lines 18-21 and col. 7, lines 60-63.

Onishi discloses incorporating sorbic acid and/or its salt or a salt of sulfurous acid into food to stabilize synthetic colors such as coal-tar color and natural colors such as anthocyanins. There is no teaching or suggestion in Onishi or Lenoble to use the agents of Lenoble to stabilize coal-tar or other synthetic colors.

The Examiner states that it would have been obvious to one of ordinary skill in the art to modify Onishi with Lenoble to incorporate caffeic acid derivatives in order to increase the stability of the pigment composition and increase the intensity of the pigments in a food product. However, neither Lenoble nor Onishi teaches or suggests incorporating caffeic acid derivatives with a synthetic color compound. Lenoble only teaches using caffeic acid derivatives as pigment-improving agents for anthocyanin pigments, which deepen and improve the intensity of the anthocyanin pigments.

Additionally, the caffeic acid derivatives and other stabilizers used in the present invention are color stabilizers; however they do not intensify or deepen the color of the pigment they are stabilizing. Rather, the color stabilizers of the present invention function to stabilize the color from fading due to exposure to light. As such, the color stabilizers of the present invention are not copigments of the synthetic colors.

Furthermore, Lenoble explicitly teaches away from independent claims 1, 20 and 21, using the pigment-improving agents such as caffeic acid derivatives with synthetic colors such as coal-tars. Neither Lenoble nor Onishi teaches or suggests that the pigment-improving agents of Lenoble act to stabilize synthetic colors such as coal-tars upon exposure to light. Since Lenoble requires that the pigment-improving agent and the color to be stabilized are copigments, Lenoble explicitly teaches away from using these agents to stabilize synthetic colors of which the agent is not a copigment. Teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical.*, 837 F.2d 469 (Fed. Cir. 1988).

Therefore, it is improper to combine the pigment-improving agents of Lenoble with the synthetic color pigments such as coal-tar colors of Onishi. In view of the above,

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claims 1-13 and 15-25 are not obvious over Onishi and Lenoble because neither teaches nor suggests adding caffeic acid derivatives to stabilize synthetic colors as in the present invention. Applicants respectfully request the rejection under 35 U.S.C. §103(a) be withdrawn.

**CONCLUSION**

Claims 1-13 and 15-25 are in condition for allowance and an early indication of allowance is solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Ryndak', is written over a horizontal line.

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